

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

NRG ENERGY, INC.,

Plaintiff,

v.

PUBLIC SERVICE COMMISSION OF
THE STATE OF DELAWARE, and
ARNETTA MCRAE, JAYMES B.
LESTER, JOANN CONAWAY, DALLAS
WINSLOW and JEFFREY CLARK, in
their capacity as Commissioners,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT

Plaintiff NRG Energy, Inc., by and through their undersigned attorneys, for their verified complaint, allege as follows:

Nature of The Action

1. This action for injunctive relief arises from a matter in front of the Public Service Commission of the State of Delaware (the “Commission”) captioned “In the Matter of Integrated Resource Planning for the Provision of Standard Offer Supply Service by the Delmarva Power & Light Company Under 26 *Del. C.* § 1007(c) & (d): Review and Approval of the Request for Proposals for the Construction of New Generation Resources Under 26 *Del. C.* § 1007(d), PSC Docket No. 06-241” (the “RFP”). In the RFP proceedings, the Commission is reviewing proposals from NRG, Bluewater Wind, LLC and Conectiv, Inc. (collectively the “Bidders”) to construct new energy generation sources in Delaware in exchange for entering into a long-term power supply contract with Delmarva Power & Light (“Delmarva”).

2. In December 2006, the Bidders submitted written proposals to the Commission, which detail their respective plans for constructing new energy generation facilities in Delaware and the terms of the proposed long-term energy power supply contracts. The Bidders also submitted public versions of these proposals intended for the public's review. NRG's 1,100-page proposal detailed NRG's plans to construct a clean coal facility in Indian River, Delaware using newly developed Integrated Gasification Combined Cycle (IGCC) technology. NRG's application of this innovative base load technology to the Indian River facility is the result of two years of intensive research, development and engineering, with dedication of significant human and monetary capital over that period, to provide a comprehensive, credible and executable plan for advanced generation in Delaware that meets all the requirements of 26 Del. C. § 1007 (the "Electric Utility Retail Customer Supply Act of 2006" or "EURCSA").

3. Pursuant to The News Journal's Freedom of Information Act ("FOIA") request for all redacted portions of all bids, the Commission has asked the Bidders to reconsider its redactions and explain, in detail, the basis for these redactions. Since the Commission's initial request, NRG has resubmitted its public bid proposal twice, releasing more information with each submission and explaining the bases for its redactions each time.

4. On March 20, 2007, the Commission rejected certain of NRG's most recent, and most detailed, confidentiality designations and ordered release of portions of NRG's confidential information (consisting of 22 separate items) on March 27, 2007. The information to be released includes information that are trade secrets and confidential/commercial or financial information pursuant to 29 *Del. C.* § 10002(g)(2) and are not, therefore, part of the public record under FOIA. This information is of a sensitive commercial nature of peculiar

value to NRG's business (and NRG's competitors), is information NRG has sought to keep confidential, has been compiled with significant effort and money expended by NRG, and is not generally available to the public. Its disclosure will cause serious competitive injury to NRG in the pending bid process, in other bid processes and in other commercial endeavors – both within and beyond Delaware. Disclosure will disadvantage and harm NRG's ability to negotiate with potential vendors and other counterparties for its Indian River proposal as well as for other projects. It would also disclose the considerable and comprehensive work product (including without limitation corporate strategies and specific implementation plans) of NRG and its consultants to NRG's competitors, which NRG has expended millions of dollars and many man hours over the past two years to develop and position itself at the forefront of the clean coal energy industry in the United States. As a result, injunctive relief preventing public disclosure of this confidential information is necessary.

The Parties

5. Plaintiff NRG Energy, Inc., a Delaware corporation founded in 1989, is a wholesale power generation company, primarily engaged in the ownership, development, construction and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the trading of energy, capacity and related products in the United States and internationally. Operations include competitive energy production, power marketing, district heating and cooling production and thermal energy production.

6. Defendant Public Service Commission of the State of Delaware is a state agency created in 1949 to regulate investor-owned public utilities.

7. Defendant Arnetta McRae is chairperson of the Defendant Public Service Commission and is joined as a defendant solely in her capacity as Chairman of the Commission.

8. Defendants Jaymes B. Lester, Joann Conaway, Dallas Winslow and Jeffrey Clark are Commissioners of the Defendant Public Service Commission and are joined as defendants solely in their capacity as Commissioners.

**Jurisdiction of This Court and
NRG's Protective Appeal in Superior Court**

9. Defendants have announced their intention to disclose to the public NRG's confidential information that is not part of the public record. This action violates NRG's rights under FOIA to keep confidential information that it submits to the Commission out of the public record. NRG now seeks to enjoin Defendants, preliminarily and permanently, from releasing this information. Section 10005(a) of title 29 of the Delaware Code gives this Court jurisdiction over a claim that an agency has taken action in violation of FOIA:

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of the citizen's learning of such action but in no event later than 6 months after the date of the action.

10. Parties before the Commission have a statutory right of appeal under the Administrative Procedures Act, 29 *Del. C.* Ch. 101. That statute, however, allows appeals only from agency regulations and "case decisions." The Commission's decision to release NRG's confidential and proprietary information is not, in NRG's view, either a regulation or case decision. Out of an abundance of caution, NRG has filed a protective appeal in Superior Court – solely to preserve its rights – which NRG does not intend to prosecute, unless this Court declines to resolve NRG's claims.

11. This Court also has inherent, equitable jurisdiction to enjoin an illegal or arbitrary decision, or abuses of discretion, by agencies where – as here – there is no remedy at law available.

The Bidders Submit Their Proposals

12. Pursuant to 26 *Del. C.* § 1007(d), on August 1, 2006, Delmarva filed a proposal to obtain long-term supply contracts that included a proposed form of “Request for Proposals” (“RFP”) for the construction of new generation resources within Delaware for the purpose of serving customers taking standard offer service. Following public comment sessions on Delmarva’s form of RFP, an amended form of RFP was approved and issued on November 1, 2006 soliciting proposals for the construction of new generation resources. In response to the RFP, on or around December 22, 2006, the Bidders submitted proposals for the construction of new generation resources.

13. NRG’s proposal was, by far, the most comprehensive, detailed and largest. NRG’s approximately 1,100-page proposal detailed every aspect of its plan to construct a clean coal facility in Indian River, Delaware. The proposal included an in-depth description of NRG’s use of Integrated Gasification Combined Cycle (IGCC) technology at the Indian River Facility. IGCC is a state of the art advanced power generation technology developed to produce coal-fueled, baseload power at a competitive price and with a superior environmental footprint – including the ability to meaningfully address global climate change issues through carbon capture and sequestration. NRG has heavily invested time, money and intellectual capital in the IGCC technology over the past two years, including its site-specific application at NRG’s existing Indian River plant. The Proposal included data on pricing, technology, potential counterparties, the feasibility of the project, NRG’s plans for implementation of every aspect of the project, proposed equity and debt structures and NRG’s proposed contractual terms across a myriad of arrangements including, without limitation, power supply, fuel supply and transportation, technology supply, engineering, procurement and construction, operations and maintenance, shareholder, financing and other ancillary agreements. In order to preserve the fruits of its two-

year effort in developing IGCC for Indian River and to preserve its competitiveness in the marketplace in the context of IGCC technology in addition to NRG's business of developing and operating power plans in general, NRG redacted from its public bid proposal only that material it viewed as protected from public disclosure under FOIA.

14. The RFP Instructions to Bidders, which were approved by the PSC, indicated that bidders could expect the confidential and proprietary portions of their proposals and related communications to remain confidential (Instructions § 6.2):

Communications between Evaluation Team Members and Bidders

The Company regards communication between the Team and the bidders as confidential among the parties required to evaluate the proposals, which includes but may not be limited to the Team, the Independent Consultant and the State Agencies. The Team (as well as the Independent Consultant and the State Agencies) is not responsible for information regarding their proposals that the bidders may release.

15. The RFP Instructions to Bidders also included specific directions on how to mark documents for confidential treatment and who would be allowed access to those documents.

... [B]idders should clearly identify each page or section of information in their proposal considered by bidder to be confidential or proprietary. Delmarva reserves the right to release proposals to agents or consultants of Delmarva for purposes of proposal evaluation. Delmarva's disclosure standards and policies will contractually bind such agents or consultants. In addition, Delmarva will release proposals and related submittals to the Independent Consultant retained by the State Agencies for purposes of proposal evaluation; the Independent Consultant will make reasonable efforts to preserve bidders' confidential information. Regardless of the confidentiality, information contained in proposals may be subject to disclosure to and review by appropriate state jurisdictions, or any other governmental authority or judicial body with jurisdiction relating to these matters or agents thereof and may be subject to legal discovery. Under such regulatory and legal circumstances, Delmarva will make all

reasonable efforts to preserve bidders' confidential information, including requesting that it be filed under seal.

16. The Commission's Rules of Practice and Procedure include instructions for designating materials filed with the Commission as confidential and also provide that (Rule 11(f)):

Non-public information shall not be disclosed by the Commission, its Staff, the Division of the Public Advocate, and their consultants and any party to a proprietary agreement and its consultants except as authorized by law.

17. The RFP Instructions to Bidders, the Commission's Rules of Practice and Procedure as well as FOIA led NRG to reasonably expect that its confidential information would not be released to the public. NRG has complied with all of the requirements in the RFP Instructions to Bidders and the Commission's Rules of Practice and Procedure to designate information as confidential.

18. Although the Commission and other state agencies charged with reviewing the Bidders' proposals have set their own deadlines in these proceedings, there is no statutorily compelled timeframe for a final decision and the reviewing agencies have the discretion to extend the date for any and all of the procedural milestones. As of now, pursuant to an order issued by the reviewing agencies, the reviewing agencies will meet to discuss their conclusions regarding the RFP process on May 8, 2007. If the reviewing agencies instruct Delmarva to begin negotiations to finalize a contract with one of the Bidders, the negotiations must be completed and a final contract submitted by June 15, 2007. On or before June 19, 2007, or another mutually agreed upon date, the four reviewing agencies will make a final decision on the material submitted by June 15 and will sign any orders necessary to approve the contract. The order setting these deadlines, however, reserved the reviewing agencies' right to enter additional orders if necessary. In the Commission's March 20 decision, for instance, the

Commission extended the period for public comment on the evaluation reports on the Bidders' submissions prepared by the Independent Consultant for the state agencies and Delmarva's consultant from March 23 to April 6, 2007. Thus, if proceedings contesting the Commission's confidentiality decisions extended past any other of these deadlines, the Commission and other reviewing agencies have the authority to extend these originally specified deadlines.

The Commission Requires The Bidders to Resubmit Their Proposals

19. After the parties submitted their public bid proposals in January 2007, the Commission subsequently ordered the parties to reconsider and resubmit public versions of their bids. This time, the parties were to release as much information as possible and provide written justification for each redacted item.

20. On February 16, NRG resubmitted its redacted public bid proposal with written justification for its redactions. In reliance on FOIA and Delaware cases involving confidential material, NRG redacted material related to pricing, technology, potential counterparties, equity and debt structure, specific contractual terms including those relating to power supply, fuel supply and transportation, technology supply, engineering procurement, construction, operations and maintenance, financing, other ancillary agreements, performance data and other confidential aspects of their bid. In its February 16 letter, NRG explained its reasons for the redactions and why disclosure would cause it irreparable harm. A true and correct copy of NRG's February 16, 2007 letter is attached as Exhibit A.

21. On February 20, Mr. Sheehy of the Commission emailed NRG's counsel directing them to provide more detailed reasoning for the redactions in NRG's February 16, 2007 submission.

22. Also on February 20, The News Journal filed a FOIA request with the Commission. The News Journal requested disclosure of all pages of all bids without any redactions. The request specifically included “project costs, potential generating capacities, prices for energy and projected environmental emissions of any type, under any scenarios.”

23. On February 23, before NRG had responded to Mr. Sheehy’s email, Janis Dillard, Commission Staff member, and William F. O’Brien, Senior Hearing Examiner for the Staff, sent a memorandum to the Commission making certain recommendations about the redactions in the Bidders’ submissions. The memorandum focused on redactions relating to pricing and environmental impact. Ms. Dillard and Mr. O’Brien recommended that the Commission require NRG to make public “Form H” of its submission, which contains air emissions data for the proposed facility. They did not, however, recommend that information regarding the Bidders’ pricing be made public.

24. On February 26, 2007, NRG submitted its public bid proposal for the third time. This proposal made public an additional 300 pages of redactions, which had become public since February 16, 2007 or for which NRG had otherwise decided not to continue seeking confidential treatment based on, among other things, evolving developments with vendors, counterparties and, as a result, the ability to acknowledge and release certain information. The submission included a letter from NRG’s counsel providing a more specific factual and legal basis for its redactions. A true and correct copy of NRG’s February 26, 2007 letter is attached as Exhibit B. The letter separated all redacted material into two broader categories, price-related/commercial information and other trade secret information, and then designated 4 sub-categories under each broad designation. In the public bid submission itself, all redactions were

electronically stamped with designations corresponding to categories in the February 26 memorandum.

**The Commission Staff Discloses a Portion of NRG's Confidential Information
and The Commission Decides to Release Certain Confidential Information**

25. On March 14, the Commission's staff ("Staff") responded to the Commission's request for a "granular" review of the three Bidders' most recently submitted redacted bid materials by distributing to the Bidders and posting on the Commission website a memorandum detailing which of the Bidders' redactions it believed should be made public, and giving a generalized description of the Staff's reasoning. The memorandum included an attached Table A that listed the documents that, in Staff's view, should be disclosed. Unfortunately, several of the document descriptions in Table A included the confidential information that NRG had redacted from those documents – effectively disclosing NRG's confidential information prior to any Commission decision. NRG objected to this disclosure in a letter filed with the Commission on March 15 and the Commission's Staff removed Table A from its website on March 16.

26. On March 19, NRG filed the Affidavit of Caroline Angoorly with the Commission. Ms. Angoorly's affidavit further narrowed NRG's confidentiality claims, eliminating additional items from consideration based, again, in part, on the continuing development of the project and communications with vendors and counterparties. That affidavit also specifically addressed the remaining items that staff recommended for disclosure, providing detailed justification for maintaining their confidential treatment.

27. At the time of the Commission meeting on March 20, there was considerable confusion concerning whether the materials that the Staff reviewed, and which are the basis of Staff's March 14 memorandum, are actually from the correct public bid submission

by NRG. Documents provided by the Staff to NRG to explain the basis for the recommendations in the March 14 memorandum appear to come from one of NRG's earlier public bid submissions, which had broader claims of confidential information than NRG's latest submission on February 26. NRG requested a delay to clarify the record, but the Commission denied that request.

28. On March 20, 2007, the Commission announced its decision to follow the Staff's recommendation with respect to 22 of the 25 items as to which there was still a dispute between NRG and Staff but ruled in favor of NRG on three items. The decision instructed Staff to release 22 of the items that NRG had redacted from its third public submission. The Commission also ordered that two other items recommended for release by Staff not be released, based on Staff's recognition that those pages did in fact contain confidential pricing information which Staff had mistakenly recommended for release. The Commission instructed Staff not to release any information for 5 business days from the date of the decision. Thus, unless the Court grants injunctive relief, the Commission will release the confidential and proprietary information to the public on March 27, 2007. A true and correct copy of the Commission's March 20 decision is attached as Exhibit C.

29. The Commission's March 20 decision calls for the release of numerous items that are protected from public access by FOIA, including, but not limited to, the following:

- a. The actual terms of NRG's proposed form of Power Purchase Agreement (PPA) between NRG and Delmarva Power & Light Company. The PPA is still subject to negotiation between NRG and DP&L but includes projected key pricing information and material terms subject in part to NRG reaching agreement with potential vendors and other counterparties. NRG provided summary comments, alternative terms, and specific modifications of key terms. This information goes directly to what type of deal NRG has proposed and, more importantly, what type of deal NRG would accept. Release of this information could cause serious

competitive disadvantage to NRG in both this competitive solicitation process (which remains ongoing), but will also hurt NRG in bid processes in other states – currently or in the future. In any large power generation transaction, the PPA is the central document since it reflects the terms on which revenues from the project are expected to be realized – including components of pricing and payments. This document will directly influence the structure and terms of all other key project documents in a development and financing of the type NRG proposes for the Indian River IGCC project – consistent with usual and customary project development and financing techniques, as implemented by sophisticated and experienced commercial parties.

- b. Project specific trade secret information, including detailed projected output, schedules and technical and commercial performance standards of the IGCC Indian River facility that factor directly into NRG’s strategic construction schedules and planning, pricing, proprietary operating strategies, and unique design features of the proposed facility in the yet to be finalized construction-technology provider contract (which will have material impacts on other key commercial contract terms including, for example, fuel supply contracts and fuel specifications). This also includes information on specific application of IGCC technology to Indian River as well as detailed information about the Indian River site. Potential vendors, technology providers and other project counterparties, as well as competitors, could use this detailed projected output and performance standards data “reverse engineer” NRG’s pricing structure, highlight NRG’s “hold up” points in negotiations (in the trade-off between guaranteed performance and pricing parameters) and otherwise free ride on NRG’s development of IGCC technology.
- c. Key projected financing terms and the identity of lending institutions that have provided NRG with preliminary indications of financeability and support for the IGCC Indian River facility. Actual financing terms and selection of key lending institutions have not been finalized, and the key financing projections and terms are still subject to negotiation. This information includes possible ownership structure, interest rate assumptions, loan terms – in short, NRG’s financing strategies. Disclosure of such information will competitively disadvantage NRG’s ability to negotiate agreements with key lending institutions and will give competitors access to NRG’s financial strategies.
- d. The identity of certain potential vendors, and the products or work those vendors could provide to the IGCC Indian River facility.

Whether these vendors are selected as part of the IGCC development process going forward is subject to continuing and ongoing negotiations, and release of such information will greatly harm NRG's ability to negotiate contracts with potential vendors. Moreover, release of this information would allow NRG's competitors to capitalize on the significant money and time spent by NRG in developing confidential work product concerning the vendors capable of providing products and services to support cutting edge IGCC technology.

- e. Operating costs and characteristics of the existing and proposed facilities that had been used, in whole or in part, by NRG to develop its bid price, and in turn, the details of the transaction that NRG has proposed and the types of deal structure and terms that NRG might accept. Releasing this information allows competitors to access strategic information as to how NRG operates its facilities and develops and plans its projects. Release would also allow vendors to determine that NRG is choosing certain equipment or products before negotiations have begun, greatly harming NRG's ability to negotiate with potential vendors.

30. The information to be released as a result of the Commission's March 20 decision is currently not part of the public record and is protected from public disclosure by the Commission's Rules of Practice and Procedure, the RFP Instructions to Bidders and FOIA. The Commission's decision was unreasonable, illegal and arbitrary. It was based on a flawed process and constituted an abuse of discretion.

31. Release of NRG's information would result in immediate and irreparable harm because it would provide NRG's competitors, potential vendors and other counterparties with access to confidential and proprietary information concerning the specific IGCC technology application planned for Indian River and NRG's bid proposal. NRG has spent considerable time and money over the past two years developing this technology for use at Indian River. The availability of this information to NRG's competitors would diminish any competitive advantage it enjoys as a result of the technology and allow NRG's competitors to free ride off of NRG's research and development. Release of NRG's confidential and proprietary information would

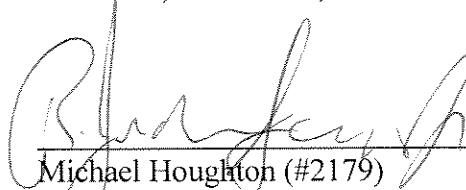
also seriously harm NRG's ability to negotiate with lending institutions and potential vendors and other counterparties needed for this project as well as other projects. NRG relies on the confidentiality of its pricing, expected performance standards and financing terms, as well as the identity of its lenders in submitting bids. The availability of NRG's confidential information would undermine its ability to bid competitively in this RFP and other bid processes, as well as injure NRG's competitive position in other commercial situations.

32. NRG has no adequate remedy at law.

WHEREFORE, Plaintiff seeks the entry of an Order

- (a) Enjoining Defendants, preliminarily and permanently, from releasing any of NRG's information that is not currently part of the public record in the IRP proceeding;
- (b) Awarding Plaintiff its costs of this lawsuit; and
- (c) Granting such other and further relief as is appropriate.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP



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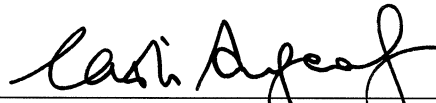
March 21, 2007

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VERIFICATION

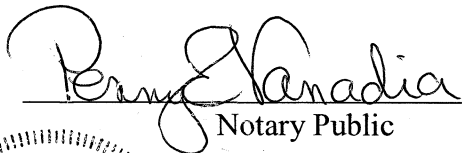
STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

I, Caroline Angoorly, being duly sworn, hereby verify and affirm that I have read the foregoing **Verified Complaint** and that the facts recited therein are true and correct to the best of my knowledge, information and belief.



Caroline Angoorly

SWORN TO AND SUBSCRIBED before
me this 21th day of March, 2007.



Notary Public

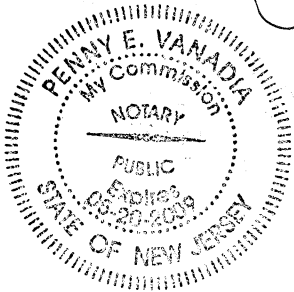


EXHIBIT A

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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DELAWARE P.S.C.

February 16, 2007

BY HAND DELIVERY

Arnetta McRae, Chair
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Re: In the Matter of Integrated Resource Planning for the Provision of
Standard Offer Supply Service by the Delmarva Power & Light Company
Under 26 Del. C. Section 1007(c) & (d): Review and Approval of the
Request for Proposals for the Construction of New Generation Resources
Under 26 Del. C. Section 1007(d), PSC Docket No 06-241

Dear Chairperson McRae:

Pursuant to the Delaware Public Service Commission's (the "Commission") February 6, 2007 ruling on Professor Jeremy Firestone's **Motion to Commence Proceedings to Determine Validity of Assertions of Confidentiality**, enclosed please find NRG Energy, Inc's (hereinafter "NRG") re-redacted public bid proposal in Delaware Public Service Commission Docket No. 06-241. After the Commission's February 6, 2007 ruling, we have reviewed our redacted January 24, 2007 bid proposal in detail and re-assessed our previous claims of confidentiality.

Of all the proposals submitted, NRG's proposal was probably the most comprehensive at approximately 1,000 pages in total. From NRG's perspective, such a large submittal was not due to filler, but instead demonstrates that NRG has heavily invested in Integrated Gasification Combined Cycle (IGCC) technology for the past two years and the size, depth and breadth of our proposal reflects those efforts. As a result of the considerable investment in time, intellectual capital and money, NRG has built up an enormous amount of data on pricing, technology, feasibility, plans, know-how, etc. to make the Indian River IGCC plant a reality and radically reduce any perceived "execution risk" in the evaluation process. In turn, by compiling such extensive data on this innovative baseload technology and inserting it into its proposal under this Docket, there are broad categories of information that if disclosed to

competitors (either within Delaware or beyond it) would cause serious competitive disadvantage and/or greatly harm NRG in its core business. It would be impractical and inefficient to draft a point-by-point analysis of each redaction made, but the following addresses with reasonable particularity the categories of redactions contained in NRG's attached re-redacted public bid proposal and the basis for such redactions.

Pursuant to Delaware's Freedom of Information Act, 29 Del. C. Ch. 100, all information filed with the Commission is considered a public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." *See, e.g.*, PSC Order No. 6869 in regulation Docket No. 15 (March 14, 2006) at Section X; PSC Order No. 6793 in regulation Docket No. 65 (December 6, 2005) at §5.1; 29 Del. C. §10002(g)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall preemptively deem all information so designated to be exempt from public record status. *Id.*; PSC Rules of Practice and Procedure, Rule 11(a).

Under Delaware law a trade secret is "confidential and proprietary information" which, if it "falls into a rival's hands", will cause "serious competitive disadvantage." *Id.* Biomedical Corp. v. TM Technologies, Inc., 1994 WL 384605 (Del. Ch. 1994). Trade secrets include – but are not limited to – formulas, patterns, devices, compilations of information, even lists of customers that give a business the opportunity to obtain an advantage over competitors who do not know or use such information. Del. Op. Atty. Gen. 77-029 (September 27, 1977).

"Commercial or financial information obtained from a person which is of a privileged or confidential nature" has been broadly interpreted to mean information not known to the public which would give a competitor an edge. Del. Op. Atty. Gen. 77-037 (December 28, 1977). In the public bid process, such information specifically includes information that may have been required to be submitted in order for a state agency to evaluate the company but which, if released, would greatly harm the company and might be used by a competitor. *Id.* (emphasis added). Confidential or privileged commercial or financial information has been determined to include – but is not limited to – such information as assets, product pricing, profits and losses, stock holdings, loans, proposed or pledged collateral, and technical approaches to a public bid, including but not limited to details about processes, operations and style of work. Del. Op. Atty. Gen. 87-1031 (November 4, 1987); and Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del. 1996), available at 1996 WL 33502232.

Relying on the authorities cited above, specific details regarding NRG's pricing proposals with or without carbon capture sequestration, the commercial structures NRG proposes to use in the Power Purchase Agreement (PPA) tariff, and NRG's entire mark-up of the proposed PPA have all been redacted. All of this information goes directly to what type of deal NRG has proposed and more importantly what type of deal NRG would accept, which could cause serious competitive disadvantage to NRG in both this competitive solicitation process (which remains

ongoing), but will also competitively disadvantage NRG in bid processes in other states -- currently or in the future.

All references to and details regarding counterparties who were involved in assembling the bid and who may be a part of the IGCC development process going forward subject to ongoing commercial negotiations have been redacted. The future success in the development of the IGCC plant at the Indian River site requires NRG to maintain as much leverage as possible with potential counterparties. Such leverage will benefit the overall structure and pricing for the PPA, which in turn directly inures to the benefit of Delmarva and ultimately the public. Conversely, and quite obviously, disclosure of such information will competitively disadvantage and greatly harm NRG's ability to negotiate the best and most commercially reasonable contract or other agreements with potential counterparties.

All references to and details of NRG's paid consultants and their work, findings and recommendations in connection with the development of the Indian River IGCC plant have been redacted, including the names of the retained consultants and description of their work in the Appendices Volume II Table of Contents. NRG has retained these third-party consultants and paid them considerable sums to provide their expertise to develop the cutting-edge technology know-how, etc. to make the Indian River IGCC plant a reality. As a whole, this data goes directly to NRG's competitive advantage in its business, and not just in the context of this RFP. As is the case with a vast majority of the information redacted, if such information were to be disclosed to the public, it is quite conceivable that our existing and potential competitors would be flooding the PSC website to download NRG's documents to either find a means to undercut NRG's bid, and/or to go to school on our hard work and capitalize on our hard-won experience for free.

Certain specific percentages and expected performance data have been redacted throughout NRG's public bid proposal. This information is not only confidential to our vendors, but also remains subject to being confirmed in our negotiations with contractors, so early disclosure would serve only to highlight to those counterparties our "hold up" point -- again with the potential to jeopardize the entire project. Emissions or comparable data that comes from an existing, publicly available source like the United States Environmental Protection Agency, the Electric Power Research Institute, or other non-Indian River IGCC specific sources have not been redacted.

Other competitively sensitive data, such as cost per ton measures for Carbon Dioxide, as well as projected heat rates have been redacted. Similarly, the specific costs for interconnection and carbon capture sequestration were redacted. Should NRG be forced to disclose the major components of its costs, competitors will be able to back-calculate NRG's economics and hurdle rate which would be an enormous competitive disadvantage to its business going forward, both with this RFP and more generally.

Finally, peculiar aspects of NRG's business -- such as how NRG generally manages fuel -- and expected operating characteristics of the Indian River IGCC facility are

Chairperson Arnetta McRae
February 16, 2007
Page 4

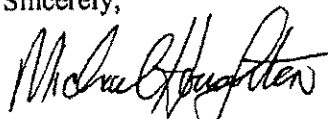
redacted because public disclosure of such information would seriously damage NRG's competitive advantage elsewhere.

For all of the reasons set forth above, the redacted information is crucial competitive data at the heart of NRG's core business operations and future development plans, and public disclosure of this information will cause serious and irreversible harm to NRG's competitive advantage in the marketplace. As a result, the redacted information contained in the attached bid proposal must not be disclosed by the PSC for at least three (3) years from the date of NRG's RFP submission to the PSC on December 17, 2006. Further, prior to any release of information NRG deems to be confidential, NRG requests that the Commission provide NRG with reasonable notice and an opportunity to show why the information should not be released.

In short, we believe that NRG has submitted -- even in its redacted form -- a very comprehensive and polished proposal that should reflect that NRG has given a lot of thought to how the proposed Indian River IGCC facility will cleanly, effectively and efficiently operate into the future. We also have given an enormous amount of thought, time and energy to our redactions so as to ensure that members of the public are able to review the great majority of NRG's bid in order to understand our proposal and provide meaningful comments.

Also enclosed on disk is an electronic copy of NRG's re-redacted bid proposal. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Michael Houghton

MH/fv

Enclosures

cc: Interested Parties in PSC Docket No. 06-241 (via E-mail w/o Enclosures)

EXHIBIT B

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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February 26, 2007

BY HAND DELIVERY

Arnetta McRae, Chair
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Re: In the Matter of Integrated Resource Planning for the Provision of
Standard Offer Supply Service by the Delmarva Power & Light Company
Under 26 Del. C. Section 1007(c) & (d): Review and Approval of the
Request for Proposals for the Construction of New Generation Resources
Under 26 Del. C. Section 1007(d), PSC Docket No 06-241

Dear Chairperson McRae:

Pursuant to Mr. Sheehy's February 20, 2007 E-mail to me, as counsel for NRG Energy, Inc. ("NRG"), directing more detailed information as to the basis for NRG's redaction of its bid proposal in the above-referenced docket, enclosed please find a revised redacted version of NRG's bid proposal. This additional redaction makes public more than 300 pages of additional bid information. This additional information is being released either as the result of certain information becoming public since February 16, 2007, the date of NRG's last redaction, or because there is no longer a need for confidential treatment.

This most recent redaction, and this letter, constitute NRG's good faith attempt – after five days of additional detailed review – to provide more specific basis for its redactions. After consultation with Staff, and in order to facilitate Staff's review, NRG has attempted to follow the overall approach used by Conectiv Energy Supply ("Conectiv Energy") in both the February 16, 2007 letter of its counsel and the revised Conectiv Energy redaction. In this regard, we have adopted the categories and basis (including legal authorities) supporting the redactions made by Conectiv Energy and have attempted to format this revised redaction to provide similar detail and explanations for NRG's redactions.

As noted in NRG's February 16, 2007 letter, pursuant to Delaware's Freedom of Information Act, 29 Del. C. Ch. 100, all information filed with the Commission is considered a

public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." *See, e.g.*, PSC Order No. 6869 in regulation Docket No. 15 (March 14, 2006) at Section X; PSC Order No. 6793 in regulation Docket No. 65 (December 6, 2005) at §5.1; 29 Del. C. §10002(g)(2); Del. Op. Atty. Gen. 00-1B15 (October 4, 2000). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall preemptively deem all information so designated to be exempt from public record status. *Id.*; PSC Rules of Practice and Procedure, Rule 11(a).

Under Delaware law a trade secret is "confidential and proprietary information" which, if it "falls into a rival's hands", will cause "serious competitive disadvantage." *Id. Biomedical Corp. v. TM Technologies, Inc.*, 1994 WL 384605 (Del. Ch. 1994). Trade secrets include – but are not limited to – formulas, patterns, devices, compilations of information, even lists of customers that give a business the opportunity to obtain an advantage over competitors who do not know or use such information. Del. Op. Atty. Gen. 77-029 (September 27, 1977).

"Commercial or financial information obtained from a person which is of a privileged or confidential nature" has been broadly interpreted to mean information not known to the public which would give a competitor an edge. Del. Op. Atty. Gen. 77-037 (December 28, 1977). In the public bid process, such information specifically includes information that may have been required to be submitted in order for a state agency to evaluate the company but which, if released, would greatly harm the company and might be used by a competitor. *Id.* (emphasis added). Confidential or privileged commercial or financial information has been determined to include – but is not limited to – such information as assets, product pricing, profits and losses, stock holdings, loans, proposed or pledged collateral, and technical approaches to a public bid, including but not limited to details about processes, operations and style of work. Del. Op. Atty. Gen. 87-1031 (November 4, 1987); and Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del. 1996), available at 1996 WL 33502232.

These authorities, as well as those cited by Conectiv Energy in its February 16, 2007 letter, support the NRG redactions in this most recent redaction of bid documents.

1. Price-Related/Commercial Information

Much of the redacted information found in NRG's approximately 1100 page bid proposal constitutes commercial and financial information not required to be disclosed under 29 Del. C. §10002(g)(2). Relying on the authorities noted above, specific details regarding, for example, NRG's pricing proposals, with or without carbon capture sequestration, the commercial structures NRG proposes to use in the Power Purchase Agreement (PPA), and NRG's entire mark-up of the proposed PPA have all been redacted. The redacted information, identified in the revised redaction as falling into this category, generally relates to:

- A. Corporate financial information (internal cost of capital, required rate of return, financing terms and costs, etc.);
- B. Operating costs and characteristics of existing or proposed facilities (operating and maintenance costs, capacity factors, heat rates and other output data);
- C. Fuel costs, fuel transportation, fuel management and fuel acquisition strategies and data; and
- D. Certain information regarding amounts/percentages of facility emissions or facility performance data.

This information has been used, in whole or in part, by NRG to develop its bid price. Release of this information reveals the details of the transaction NRG has proposed and the types of structure and terms NRG might accept. Disclosure would cause serious competitive disadvantage to NRG in both this pending process as well as competitively disadvantage NRG in bid processes in other states – now and in the future.

As noted, information regarding types, amounts and percentages of facility emissions or performance data (e.g. cost per ton measures for carbon dioxide, the specific costs for interconnection, carbon capture sequestration data, etc.) have been redacted because, if disclosed, they could be used by potential vendors, as well as competitors, to derive pricing information which will disadvantage NRG in negotiations with potential vendors, and in competing with other bidders in this project and other projects.

2. **Other Trade Secret Information**

Redactions referenced in the revised redaction as falling into this category include commercial information protected from disclosure pursuant to 29 Del C. §10002(g)(2). This redacted material includes information which has not been previously disclosed concerning:

- A. The identity of certain potential vendors, information concerning the products or work vendors could provide to the facility, as well as the terms under which they could be a part of the IGCC development process going forward;
- B. References to, and details of, NRG's project consultants and the proprietary work product they have prepared in connection with the development of the Indian River IGCC plant;
- C. Strategic construction schedules and planning, proprietary operating strategies, and unique design features of the proposed facility; and
- D. Other non-public and proprietary aspects of NRG's overall business, as well as, nonpublic current, and expected operating characteristics of NRG or of the Indian River facility.

Chairperson Arnetta McRae
February 26, 2007
Page 4

Withholding this information prevents competitors from accessing strategic information as to how NRG operates its facilities and develops and plans its projects. It also prevents vendors from determining that NRG is choosing certain equipment or products before negotiations have begun. Disclosure of such information will competitively disadvantage and greatly harm NRG's ability to negotiate the best and most commercially reasonable agreements with potential vendors.

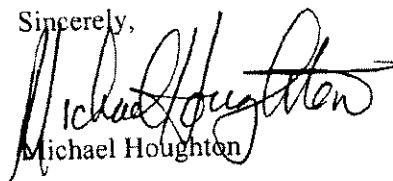
Moreover, NRG has retained project consultants and paid them considerable sums to provide their expertise to develop the cutting-edge technology and know-how to advance the Indian River IGCC project. This data is directly relevant to NRG's competitive advantage in its business, and not just in the context of this RFP. If this information was disclosed to the public, our competitors would seek this information from the PSC to capitalize on NRG's work product.

* * * * *

The information which remains redacted constitutes crucial competitive data at the heart of NRG's core business operations and future development plans. Public disclosure of this information will cause serious and irreversible harm to NRG's competitive advantage in the marketplace. The redacted information contained in the attached bid proposal must not be disclosed by the PSC for at least three (3) years from the date of NRG's RFP submission to the PSC on December 17, 2006. Further, prior to any release of information NRG deems to be confidential, NRG respectfully requests that the Commission provide NRG with reasonable notice and an opportunity to additionally demonstrate why the information should not be released.

The enclosed disk contains an electronic copy of NRG's revised redacted bid proposal. If you have any questions or concerns, please do not hesitate to have Staff contact me in order that we can discuss any issues or concerns the Commission may have regarding this revised redaction or this letter.

Sincerely,


Michael Houghton

MH/fv

Enclosures

cc: Interested Parties in PSC Docket No. 06-241 (via E-mail w/o Enclosures)

EXHIBIT C

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF INTEGRATED RESOURCE)	
PLANNING FOR THE PROVISION OF)	
STANDARD OFFER SUPPLY SERVICE BY)	
DELMARVA POWER & LIGHT COMPANY UNDER)	
26 DEL. C. §1007(c)&(d); REVIEW AND)	PSC DOCKET NO. 06-241
APPROVAL OF THE REQUEST FOR PROPOSALS)	
FOR THE CONSTRUCTION OF NEW GENERA-)	
TION RESOURCES UNDER 26 DEL. C.)	
§ 1007(d) (OPENED JULY 25, 2006))	

ORDER NO. 7148

WHEREAS, The News Journal made a formal written request dated February 16, 2007, demanding full copies of the bidders' documents submitted in connection with the captioned matter under the Delaware Freedom of Information Act ("FOIA") (29 Del. C. § 10002(g), which request was renewed by The News Journal at the hearing before the State agencies held in Legislative Hall on February 27, 2007; and

WHEREAS, the Commission thereafter directed its Staff to perform an in-depth review of each redacted document submitted by a bidder, which review has been memorialized in a memorandum dated March 14, 2007 ("Staff's Report"), which summarizes Staff's review of and conclusions regarding the issue of whether certain portions of the bidders' documents should remain confidential; and

WHEREAS, the Commission has considered Staff's Report and reviewed the materials attached as Tables to the Staff Report, which recommends that additional materials previously redacted and kept confidential should be disclosed to the public; and

WHEREAS, the Commission having previously considered a variety of arguments, petitions, and written submissions on why additional bidder information should be or should not be disclosed to the public.

Now, therefore, **IT IS HEREBY ORDERED**:

1. That, the Commission adopts Staff's recommendations dated March 13, 2007 regarding those additional bid materials that should be disclosed and made available to the public in connection with this process, with the exception of documents identified as numbers 72 and 54 of Table A to those recommendations. In addition, on the document identified as 64, the number of positions should not be disclosed.

2. That, based on Staff's further recommendation, the documents in numbers 43 and 48 are transferred from the listing in Table A (disclosure) to Table B (redactions). The redacted materials in these documents relate to pricing information.

3. That, the Commission also directs Staff not to disclose or otherwise make public any documents listed on Exhibit "A" for five (5) business days from the date of this Order. This will allow any party who believes itself to be aggrieved by the Commission's decision to take any necessary steps to protect those interests.

4. That, the Commission also extends the public comment period in this docket from March 23, 2007 to April 6, 2007 so that if this additional information, which the Commission is recommending be disclosed, is made public, participants in this proceeding who are interested in providing written comments to the Commission will have an opportunity to include such material in their submissions.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Jaymes B. Lester
Commissioner

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary